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No. 07-827

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IN THE

Supreme Court of the United States

DENNIS HASTY,
Petitioner,

v.

JAVAID IQBAL,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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REPLY BRIEF FOR THE PETITIONER

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
ARGUMENT	1
CONCLUSION	5

TABLE OF AUTHORITIES

CASES Page

Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955 (2007) 2
Erickson v. Pardus, 127 S.Ct. 2197 (2007) .. 3
Harlow v. Fitzgerald, 457 U.S. 800 (1982) .. 2
Hunter v. Bryant, 502 U.S. 224 (1991) 2, 4
Iqbal v. Hasty, 490 F.3d 143 (2nd Cir. 2007) 3
Mitchell v. Forsyth, 472 U.S. 511 (1985) 2
Saucier v. Katz, 533 U.S. 194 (2001) 2
Siegert v. Gilley, 500 U.S. 226 (1991) 4
Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002) 3

CODE AND RULE PROVISIONS

42 U.S.C. § 1983 3
Fed. R. Civ. P. 8(a) 1, 2, 3, 4

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ARGUMENT

Respondent's Brief in Opposition to the Petition for a Writ of Certiorari merits only a brief reply.

1. In response to Petitioner Dennis Hasty's assertions of qualified immunity, Respondent has asserted repeatedly, both in the lower courts and now in this Court, that Hasty is advocating an impermissible "heightened pleading standard" that conflicts with the pleading requirements under Rule 8(a) of the Federal Rules of Civil Procedure. Indeed, that is Respondent's opening salvo in his opposition, yet it is simply incorrect. Hasty has repeatedly affirmed throughout this case that he is not advocating a "heightened pleading standard."

Rather, Hasty argues that he is entitled to qualified immunity from suit because of the way the claims against him are structured by the Respondent in his First Amended Complaint. As Hasty outlines in his petition, the claims against him are conclusory, devoid of factual detail, and routinely framed in terms of what the Respondent says Hasty "knew or should have known" as warden of the Metropolitan Detention Center ("MDC") in New York. These are precisely the types of allegations that this Court condemned in *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007), when it held that "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Indeed, Rule 8(a) requires that Respondent's complaint makes a "showing" of his entitlement to relief, and it is this standard—as clarified by *Twombly*—that he fails to meet.

In addition, this Court has addressed the qualified immunity defense on numerous occasions and has long held that it must be properly applied so that federal officials can perform their official responsibilities without fear of being held personally liable. *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 800, 816-18 (1982); *Mitchell v. Forsyth*, 472 U.S. 511, 542 (1985). As an essential component of that tenet, the Court has decreed that qualified immunity should be resolved "at the earliest possible stage in litigation," *Hunter v. Bryant*, 502 U.S. 224, 227 (1991); *Saucier v. Katz*, 533 U.S. 194, 200-01 (2001), and that "peculiarly disruptive" activities like discovery should not take place until the immunity question is resolved. *Mitchell*, 472 U.S. at 526. Recognizing that this Court's decisions concerning the application of

Rule 8(a)—both in the qualified immunity context and elsewhere—are "not readily harmonized," *Iqbal v. Hasty*, 490 F.3d 143, 153 (2d Cir. 2007); App. 161a, the Court of Appeals essentially begged this Court for guidance and clarification on this critical area of law. *See id.* at 178; App. 213a (Cabranes, J., concurring) (these issues "fully deserve reconsideration by the Supreme Court at the earliest opportunity").

Yet Respondent largely ignores these points—particularly the policies that form the foundation of qualified immunity—and instead suggests that no clarification is needed, nor is there any conflict in the circuit courts of appeals. Under Respondent's view, the decisions of this Court, particularly *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002), and *Erickson v. Pardus*, 127 S. Ct. 2197 (2007), eliminate any uncertainty and effectively permit a plaintiff to defeat a qualified immunity defense at the motion to dismiss stage even where a complaint contains merely conclusory allegations against a supervisory official.[1]

Given the many decisions of this Court that emphasize the importance of the qualified immunity defense, it cannot be that this Court meant to eviscerate that defense at the motion to dismiss stage by issuing a series of unrelated rulings in various

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[1] Respondent's reliance on *Swierkiewicz* is misplaced because that was a garden-variety Title VII case with no applicability to qualified immunity issues. *Erickson*, a 42 U.S.C. § 1983 case, is admittedly more on-point. However, the requirement stated therein that "[s]pecific facts are not necessary," only "fair notice," 127 S. Ct. at 2200, remains perplexing because it was made without reference to the longstanding qualified immunity precedent of this Court.

areas of law on the meaning of Rule 8(a). Surely if this Court meant to do that, instead of employing this kind of backdoor mechanism, it would say so explicitly and explain its rationale. To the contrary, this Court has "repeatedly . . . stressed the importance of resolving immunity questions at the earliest possible stage in litigation." *Hunter*, 502 U.S. at 227 (citing cases). As it has explained, this approach is necessary to "weed out suits . . . without requiring a defendant who rightly claims qualified immunity to engage in expensive and time consuming preparation to defend the suit on its merits." *Siegert v. Gilley*, 500 U.S. 226, 232 (1991).

What Respondent's arguments *do* highlight, when considered along with the analysis of the Court of Appeals, is that clarification in this case is necessary, and the petition for a writ of certiorari should therefore be granted.

2. The Solicitor General also has a petition for a writ of certiorari pending on behalf of John D. Ashcroft and Robert Mueller, who are, respectively, the former Attorney General and the Director of the Federal Bureau of Investigation ("FBI"), which arises out of the same appeal. *See* No. 07-1015. In response to Hasty's petition, the Solicitor General notes that it "overlaps" with the petition for Ashcroft and Mueller on the "important question" of conclusory allegations without alleged direct involvement by supervisory officials. The Solicitor General argues that "th[is] question warrants this Court's review," and notes that this Court "may wish to consider that important question" both from the perspective of "high-ranking officials like the Attorney General and the Director of the FBI . . . *as well as* the lower-level supervisors like the warden of a detention facility," such as Hasty.

Solicitor General's Brief in No. 07-827 at 2 (emphasis added).

Petitioner Hasty strongly encourages the Court to do so. Although described by the Solicitor General as a "lower-level" official, Hasty is in fact "lower level" for these purposes only in relation to the Attorney General and the Director of the FBI. And, indeed, as the warden of a large detention facility with hundreds of inmates and detainees such as the MDC, Hasty is no less the focal point of frivolous law suits than the Attorney General or the head of the FBI, albeit in different contexts. In fact, due to their higher visibility within the prison system, it is even more likely that wardens such as Hasty would be subjected to burdensome litigation on a regular basis. Thus, Hasty's need for qualified immunity is no less critical than that of higher-level government officials, and he is entitled to the protection qualified immunity affords to supervisory government officials at all levels.

CONCLUSION

The petition for a writ of certiorari should be granted for the foregoing reasons, for the reasons stated in Hasty's petition, and for the reasons articulated in the Solicitor General's petition, No. 07-1015.

Respectfully submitted,

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